



புதுச்சேரி மாநில அரசிதழ்

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அதிகாரம் பெற்ற வெளியீடு

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 166/AIL/Lab./T/2022,
Puducherry, dated 15th December 2022)

NOTIFICATION

Whereas, an Award in I.D (T) No. 25/2019, dated 10-11-2022 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of dispute between the management of M/s. The Pondicherry Co-operative Milk Producers' Union Limited, No. P.1, Kurumampet, Puducherry and Ponlait Thozhilalar Sangam, Orleanpet, Puducherry, over promotion of Thiru R. Magesh, Operator (Boiler) Grade-I as Technical Superintendent;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

P. RAGINI,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL -CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Tmt. V. SOFANA DEVI, M.L.,
Presiding Officer.

Thursday, the 10th day of November 2022.

I.D. (T) No. 25/2019

in

CNR. No. PYPY06-000056-2019

The President/Secretary,
Ponlait Thozhilalar Sangam,
No.7- 8, Moovendar Street,
Mullai Nagar, Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Pondicherry Co-operative Milk
Producers' Union Limited,
No. P1, Vazhudavur Road, Kurumampet,
Puducherry. . . Respondent

This Industrial dispute coming on 20-10-2022 before me for final hearing in the presence of Thiruvalargal M. Veerappan and V.R. Aroumougam, Counsel for the Petitioner, Thiruvalargal L. Swaminathan and

I. Ilankumar, Counsel for the respondent and after hearing both sides and perusing the case records, this Court delivered the following:

AWARD

This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 100/AIL/Lab./T/2019, dated 11-07-2019 of the Labour Department, Puducherry, to resolve the following dispute between the Petitioner and the Respondent, *viz.*,

(a) Whether the dispute raised by the Ponlait Thozhilalar Sangam, Orleanpet, Puducherry, against the Management of M/s. The Pondicherry Co-operative Milk Producers' Union Limited, No. P.1, Kurumampet, Puducherry, over promotion of Thiru R. Magesh, Operator (Boiler) Grade-I as Technical Superintendent is justified or not? If justified, what relief he is entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. Brief facts of the case of the Petitioner:

The Petitioner Mr. R. Magesh who is the President of the Petitioner's Sangam has raised the dispute against the Respondent over violation of service conditions and practice so far followed by the Respondent Management. Since 2003, the Petitioner had been working in the Maintenance Department of the Respondent Management. Due to the promotion given to the four Technical Superintendent as Assistant Manager in the Maintenance Department, four vacancies had arisen in the post of Technical Superintendent in the Maintenance Department. Instead of giving opportunity to the working employees who are qualified, the Respondent Management had approached the Employment Exchange, Labour Department, Puducherry to fill the four posts of Technical Superintendent. Based on the advertisement in the Local news daily by the employment Exchange published calling for applications from the public for the post of Technical Superintendent. The Act of the Respondent Management trying to give appointment to the outsiders is against the Principles of equity, practice and service conditions of the Respondent Society. As per the information got under R.T.I Act, the Respondent Management has admitted that ten employees were working as Technical Superintendent as on 31-12-2015 and from them, except one employee others are regular employees. The Petitioner possessed the required qualification and eligible as per the service conditions such as pass in Degree, possessing Certificate of Diploma in Mechanical

Engineering, P.G. Diploma in Dairy Technology and also possessed Certificate issued from National Apprenticeship in the Trade of Boiler Attendant and ITI Fitter Trade. He has 16 years experience in the field of Maintenance Department under the Respondent Management and therefore, he is eligible for consideration to be appointed as Technical Superintendent in one of the resultant vacancies of the said post. He made several representations on 18-06-2015, 07-07-2015, 04-03-2016 and 25-08-2016 to the Respondent Management to consider his case by giving preference than choosing outsiders for offering appointment to the post of Technical Superintendent in the Respondent Management. But, the Respondent failed to act so far, without any justification.

(ii) Without adhering to the appointment of working employees who possessed required qualification and experiences to hold the post of Technical Superintendent, the Respondent Management tried to bring outsiders for extraneous reasons for appointment as Technical Superintendent. Therefore, in order to get suitable remedy and justice, Petitioner approached the Conciliation Officer. But, it was failed due to the extraneous stand taken by the Respondent Management citing that an I.D. Note issued on 23-03-2018 by the Department of Personal and Administrative Reforms Wing at Puducherry and as per the said I.D Note W.P. No. 24492/2010, ordered on 22-11-2017 by the Hon'ble Madras High Court wherein, it has been observed that large number of illegal and irregular appointment was made by the authorities and in some point of time, this Court bound to correct such wrong doing of the Authorities in the matter of Appointment, Regularization or Permanent absorption. The Respondent Management informed to the Conciliation Officer that the said order was equally apply to the Respondent management.

(iii) The abovesaid I.D. Note was applicable only to the Government Departments and Corporations run directly by the Government of Puducherry and the said note was not applicable to the Respondent Management as the same was formed as separate entity as Co-operative Society and has separate administration of Board of Directors with governing rules and regulations for running the administration. The case of the Petitioner was different one and he is a regular employee in the Respondent Society and he was seeking the Respondent Management to consider him for appointment to the vacant post of Technical Superintendent as four of the Technical Superintendent were promoted to the post of

Assistant Manager by the Respondent Management and due to the resultant vacancy caused by way of promotion of the employees who served in the post Technical Superintendent, he requested the Respondent Management to consider him for any one of the said post of Technical Superintendent and this was also necessitated due to the fact that the Respondent Management called through newspaper advertisement invited application to fill the post of Technical Superintendent. Hence the claim.

3. *Brief facts of the case of the Respondent:*

With regard to the maintainability issue, representation through Ponlait Thozhilalar Sangam, the relief sought in the claim statement filed under section 10(1) (d) of Industrial Disputes Act, 1947 by R. Magesh, the President of the Sangam is to direct the Respondent Management to consider the Petitioner before inviting outsiders in the Post of Technical Superintendent in the vacancies that arose out of 4 employees who were promoted as Assistant Managers. Mr. R. Magesh had filed petition, dated 01-09-2017 before the Labour Officer (Conciliation), Puducherry under section 2 (k) and 4 (1) of the Industrial Disputes Act, 1947 in his individual name praying to give preference for offering appointment as Technical Superintendent as 4 vacancies were available in Ponlait and to consider him for appointment to the said post either in Maintenance or in the Dairy Section. He had also filed rejoinder, dated 05-04-2018 before the Labour Officer (Conciliation), Puducherry, in his individual name. Whereas, the Failure Report, dated 11-01-2019 states that "Industrial Dispute of Mr. R. Magesh is represented by Ponlait Thozhilalar Sangam" and the consequent Notification, dated 11-07-2019 of the Commissioner of Labour-cum-Additional Secretary, Puducherry, divulge that "the dispute is raised by Ponlait Thozhilalar Sangam, Orleanpet, Puducherry, against the Management of Puducherry Co-operative Milk Producers' Union Limited over promotion of Mr. R. Magesh".

(ii) When Mr. R. Magesh had raised the dispute, over his promotion which is a service dispute in his individual name in the Conciliation Proceedings, inclusion of the name President/Secretary, Ponlait Thozhilalar Sangam, is bad under law. It has been held by various decisions of the Hon'ble High Court of Judicature, Madras and Hon'ble Apex Court that for the matters pertaining to service dispute of an individual employee Trade Unions cannot espouse the cause, the grievances of the said individual employee. The President/Secretary, Ponlait Thozhilalar Sangam being the Petitioner herein is not the person

said to have been aggrieved and the said Ponlait Thozhilalar Sangam is a stranger who cannot be permitted to espouse the cause of the individual dispute involving service matters and does not have any existing right to any post and not intrinsically concerned with any service matter is not entitled to approach this Court. The very objective of framing of section 2-A of the Industrial Disputes Act, 1947 would get defeated. Ponlait Thozhilalar Sangam is not the aggrieved person and there exists no dispute between Ponlait Thozhilalar Sangam and the administration of Ponlait and therefore, invoking section 2 (k) of the Industrial Disputes Act, 1947 cannot be entertained.

(iii) Mr. R. Magesh had approached the machineries contemplated under the Industrial Disputes Act, 1947 pre-maturedly without any cause of action/without any impugned order and hence, the present dispute on consideration of promotion to Mr. R. Magesh cannot be entertained by this Court.

(iv) Mr. R. Magesh herein, had approached the Forum of the Registrar of Co-operative Societies, Puducherry under NMD No. 3 of 2016 by invoking section 84(1) (b) of the Pondicherry Co-operative Societies Act, 1972 to fit him in appropriate designation under the pay band of ₹ 5,200-20,200+GP of ₹ 2,400 with effect from 01-07-2007 and redesignate him as Boiler Attendant Grade-I with effect from 01-07-2008 with all attendant benefits. The Registrar, Co-operative Societies, Puducherry, transferred NMD No. 3/2016 to the Deputy Registrar of Co-operative Societies, Puducherry, for disposal. After filing of the reply by the Administration of Ponlait, the Deputy Registrar of Co-operative Societies (Audit), Puducherry, had dismissed NMD No. 3 of 2016 on 09-02-2017. As against which Mr. R. Magesh had preferred an Appeal by invoking section 140 (1) of the Pondicherry Co-operative Societies Act, 1972 before Hon'ble Principal District Judge Court, (Co-operative Tribunal), Puducherry under Co-operative Appeal No. 2 of 2018 which is pending consideration.

(v) Having approached the Registrar of Co-operative Societies by invoking Pondicherry Co-operative Societies Act, 1972 under NMD No. 3 of 2016 for fitting him in the higher scale of pay with redesignation which is a service dispute and on the contrary had approached this Court, for adjudication of another service dispute under I.D. (T) 25/2019 for consideration of his promotion to the post of Technical Superintendent and thus, R. Magesh is doing Forum shopping by choosing the Court of Law according to his convenience which has to be highly censured.

(vi) Promotion in services is not a matter of right and it can only be considered as and when the individual is eligible as per rules of the administration. In the instant case, Mr. R. Magesh, Operator Grade-I (Boiler) was engaged as Casual Worker from 27-07-2005 and possessed the qualification of SSLC and I.T.I (Fitter) with a Certificate in II Class Boiler Attendant at the time of engagement as Casual worker in Ponlait. Further, Mr. R. Magesh was placed in the V Pay Time-Scale Payment commencing from 01-07-2007 to 30-06-2008 and in the VI Pay Time-Scale Payment commencing from 01-07-2008 to 30-10-2011. Subsequently, he was appointed as Operator (Boiler) purely on temporary basis with effect from 01-11-2011 and was fixed in the Pay Band of ₹ 5,200-20,200 plus Grade Pay ₹ 1,900 vide Office Order, dated 17-11-2011 issued by the then Managing Director of Ponlait. Thereafter, the said Mr. R. Magesh was promoted to the post of Operator Grade-I (Boiler) purely an *ad hoc* and temporary basis with effect from 01-03-2016 and placed in the Pay Band of ₹ 5,200 - 20,200 plus Grade Pay ₹ 2,400 vide Office Order, dated 01-03-2016 of the then Managing Director of Ponlait and the services of Mr. R. Magesh is purely temporary and has not been regularized.

(vii) The existing approved Subsidiary Regulations Governing the Service Conditions of the employees of Ponlait does not contain the post of Technical Superintendent and there is no sanctioned strength and the question of vacancy as imagined by the said Mr. R. Magesh does not exist. Unless and until amended recruitment rules as approved by the Registrar of Co-operative Societies is notified, the claim of the said Mr. R. Magesh to consider him for promotion to the post of Technical Superintendent cannot be considered and entertained more particularly in the absence of rules and vacancies.

4. Point for determination:

Whether, the Petitioner Union is entitled for an order directing the Respondent Management to consider Mr. R. Magesh for the Promotion to the Post of Technical Superintendent in the Respondent Management of the Society?

5. On Point:

On Petitioner side, PW1 Mr. R. Magesh, Petitioner himself examined and Ex.P1 to P6 marked. During cross-examination of PW1, Respondent Management marked Ex.R1 through PW1. No oral evidence adduced on the side of the Respondent Management of the Society.

6. *On the point:*

The first and the foremost objection raised by the Respondent Management of the Society is that Trade Unions cannot espouse the cause the grievances of the said individual employee on service dispute. In support of the above contention, the arguments put forth on its side that Mr. R. Magesh had filed petition, dated 01-09-2017 before the Labour Officer (Conciliation), Puducherry under section 2 (k) and 4 (1) of the Industrial Disputes Act, 1947 in his individual name. He also filed rejoinder, dated 05-04-2018 before the Labour Officer (Conciliation), Puducherry in his individual name. When Mr. R. Magesh had raised the dispute, over his promotion which is a service dispute in his individual name in the Conciliation Proceedings, and the subsequent inclusion of the name President/Secretary, Ponlait Thozhilalar Sangam is bad under law and the reference of the Dispute by the Government of Puducherry is not in consonance with the dispute raised before the Labour Department, Government of Puducherry. Further, it is contended that the Hon'ble High Court of Judicature, Madras and Hon'ble Apex Court on various occasions held that for the matters pertaining to service dispute of an individual employee, Trade Unions cannot espouse the cause the grievances of the said individual employee. The President/Secretary, Ponlait Thozhilalar Sangam being the Petitioner herein is not the person said to have been aggrieved and the said Ponlait Thozhilalar Sangam is a stranger who cannot be permitted to espouse the cause of the individual dispute involving service matters and does not have any existing right. If, such petitions are entertained, the very objective of framing of section 2-A of the Industrial Disputes Act, 1947 would get defeated. Ponlait Thozhilalar Sangam is not the aggrieved person and there exists no dispute between Ponlait Thozhilalar Sangam and the Administration of Ponlait and therefore, invoking section 2 (k) of the Industrial Disputes Act, 1947 cannot be entertained.

7. Per contra, the learned Counsel appearing for the Petitioner would say that the Labour Department, Government of Puducherry *vide* its notification has made over the said industrial dispute to this Tribunal to decide the issue on merits by way of a valid reference and thus according to the Government of Puducherry the dispute existed has to be resolved by the competent Forum. He further argued that the only authority which can form such an opinion is the Government. In support of his above contention, the learned Counsel appearing for the claim Petitioner has referred and relied upon the

following case law reported in (2011) 1 LLJ 265-Bharat Heavy Electricals Limited Vs. State of Uttarakhand and Others and State of U.P (Now Uttarakhand) and others.

8. Heard both on this point. Perused the records in this regard. The Hon'ble Apex Court in its Judgment in Newspaper Limited, Allahabad Vs. Industrial Tribunal (AIR 1960 SC 1328) has held that "any individual dispute to be declared as an industrial dispute the following conditions are to be satisfied. (i) when a body of workmen Trade Union or a considerable number of workmen, are found to have common cause with the individual workman. (ii) when the body of the workmen either acting to their Union or otherwise had sponsored a workman's case it becomes an industrial dispute provided the support or sponsorship obtained must be the workmen of the employer against whom the dispute is sought". Thus, an individual dispute to fall within the definition of industrial dispute, it must be sponsored by the Trade Union of the workmen or if, there is no Trade Union, it must be sponsored by the majority of the workmen or it must comply the requirements of section 2(A) of Industrial Disputes Act 1947. In Jadhav. J.H vs. Forbes Gobak Limited, it has been held that a dispute relating to a single workman may be an industrial dispute if, either it is espoused by the Union or by a number of workmen irrespective of the reason the Union espousing the cause of workman was not the majority of the Union.

9. Therefore, keeping in mind the above ratio held by the Hon'ble Apex Court, the case in hand and the documents filed were verified. On verification it is found that initially the Petitioner Mr. R. Magesh in his individual capacity has moved his representation before Labour Officer (Conciliation), Puducherry for the relief. Rejoinder also filed by the Petitioner Mr. R. Magesh in his individual capacity objecting the counter statement filed by the Management Society before the Labour Officer (Conciliation), Puducherry. Whereas, the reference was made by the Labour Department, Government of Puducherry, as the dispute that has arisen between the Ponlait Thozhilalar Sangam and the Managing Director, Pondicherry Co-operative Milk Producers Union Limited, Puducherry, over Promotion of Mr. R. Magesh, under section 10 (1) (d) of industrial disputes Act, 1947.

10. In the Counter Statement filed the Respondent Society in this industrial dispute, a specific *plea* has been raised that all of a sudden the Failure Report, dated 11-01-2019 states that industrial dispute of Mr. R. Magesh is represented by Ponlait Thozhilalar Sangam and consequent notification, dated 11-07-2019 of the Commissioner of Labour-cum-Additional

Secretary, Puducherry, divulge that the dispute is raised by Ponlait Thozilalargal Sangam against the Management of Pondicherry Co-operative Milk Producers Union Limited, Puducherry, over promotion of Mr. R. Magesh. Therefore, it is contended by the Respondent Society that dispute over promotion is a service dispute which was raised in his individual name by the Petitioner Mr. R. Magesh in the Conciliation proceedings and subsequent inclusion of the name of President/Secretary, Ponlait Thozilalargal Sangam is bad under law and the reference under section 10 of the Industrial Disputes Act, 1947 made in this case invoking section 2 (k) of Industrial Disputes Act, 1947 cannot be entertained.

11. Though it is a service dispute over Promotion raised by the individual before the Conciliation proceedings, but, later, *i.e.*, before the reference made by the Government of Puducherry, the dispute has been espoused by the Union namely, Ponlait Thozilalargal Sangam in which aggrieved individual workman is the Member of the said Sangam. Here, in this case as per the claim statement, the aggrieved workman Mr. R. Magesh who raised the Industrial Dispute over his promotion is the President of the said Petitioner Sangam. As the President of the Sangam Mr. R. Magesh has filed the claim petition before this Court. Since, the reference was already made by the Government of Puducherry showing that Industrial Dispute raised between Ponlait Thozilalargal Sangam and Pondicherry Co-operative Milk Producers Union Limited, Puducherry, then the dispute though it is an individual dispute it becomes an industrial disputes when it is espoused by the Union. Even before the reference made by the Labour Department, Government of Puducherry, the present dispute was espoused by the Union and therefore, the contention of the Respondent Society that individual dispute is bad in law, cannot be accepted. It is not that the reference was made to this Court, in the individual name of the Petitioner and subsequently, it has been espoused by the Union pending disposal of the Industrial Dispute. If so, subsequent espousal will render the reference invalid. Therefore, the date when the dispute was espoused is important. Here, in the instance case admittedly in the notification for the reference itself the Union name mentioned and thus the dispute was espoused even before the reference of this dispute made to this Court. Therefore, I hold that though the promotion being a service dispute when it is espoused or sponsored by the Union even before the reference to this Court, it is an Industrial Dispute and the reference made by the Labour Department, Government of Puducherry under section 10(1) (d) of Industrial Disputes Act, 1947, holds good and maintainable.

12. Next, it is contended on the Respondent Management of the society that having approached the Registrar of Co-operative Societies by invoking Pondicherry Co-operative Societies Act, 1972 under NMD No. 3 of 2016 for fitting him in the higher Scale of Pay with redesignation which is a service dispute and on the contrary had approached this Court, for adjudication of another service dispute under I.D. (T) 25/2019 for consideration of his promotion to the post of Technical Superintendent and thus Mr. R. Magesh is doing Forum shopping by choosing the Court of Law according to his convenience which has to be highly censured.

13. Industrial Disputes Act is an existing Act falling under Entry 22 of List III to Schedule VII of the Constitution of India, *viz.*, Trade Unions; Industrial and Labour disputes. Industrial Disputes Act was enacted to make provisions for the investigation and settlement of Industrial disputes and for the other purposes that are mentioned in the Act. In so far as it is relevant, section 2(j) defines 'industry', 2(k) defines 'industrial dispute' and 2(s) defines 'workman'. Chapter II of the Industrial Disputes Act provides for the authorities under the Act and Chapter III provides for reference of disputes to Boards, Courts or Tribunals. Chapter IV provides the procedure, powers and duties of authorities under the Act. Jurisdiction of the Labour Courts and Industrial Tribunals functioning under the Industrial Disputes Act are not excluded and the disputes of the nature which are explained in the Judgment of the Apex Court in Premier Automobiles Limited, would still be within the purview of the Labour Courts and Industrial Tribunals also. In other words, the legal position is that the issue regarding Promotion can be tried by the Industrial Tribunals and Jurisdiction is concurrent and the Reference made by the Government Order for over promotion not suffers from any infirmities. Further, a dispute referred by the Government of Puducherry, where the claim was espoused by the Union on behalf of the Individual raised against the Management. Therefore, the contention of the learned Counsel for the Respondent Management Society regarding Forum Shopping also not acceptable and thus not sustainable.

14. The next and last question to be decided is that, "whether Mr. R. Magesh is entitled for an order from this Court directing the Management Society to consider his Promotion". On this point, the Respondent Society has submitted that Services of Mr. R. Magesh is purely temporary and has not been regularized and his claim is Premature one, since no cause of action/without any impugned order the dispute has been raised. It is also argued that the Promotion in services

is not a matter of right and it can only be considered as and when the individual is eligible as per rules of the administration. In the instant case, Mr. R. Magesh, Operator Grade-I (Boiler) was engaged as Casual Worker from 27-07-2005 and possessed the qualification of S.S.L.C. and I.T.I (Fitter) with a Certificate in II Class Boiler Attendant at the time of engagement as Casual worker in Ponlait. Further, it is contended that Mr. R. Magesh was placed in the V Pay Time-Scale Payment commencing from 01-07-2007 to 30-06-2008 and in the VI Pay Time-Scale Payment commencing from 01-07-2008 to 30-10-2011. Subsequently, Mr. R. Magesh was appointed as Operator (Boiler) purely on temporary basis with effect from 01-11-2011 and was fixed in the Pay Band of ₹ 5,200-20,200 plus Grade Pay ₹ 1,900 *vide* Office Order, dated 17-11-2011 issued by the then Managing Director of Ponlait. Thereafter, the said Mr. R. Magesh was promoted to the post of Operator Grade-I (Boiler) purely an *ad-hoc* and temporary basis with effect from 01-03-2016 and placed in the Pay Band of ₹ 5,200-20,200 plus Grade Pay ₹ 2,400 *vide* Office Order, dated 01-03-2016 of the then Managing Director of Ponlait and the services of Mr. R. Magesh is purely temporary and has not been regularized. Mr. R. Magesh had approached the machineries contemplated under the Industrial Disputes Act, 1947 pre-maturedly without any cause of action/without any impugned order and hence, the present dispute on consideration of Promotion to Mr. R. Magesh cannot be entertained by this Court.

15. Whereas, on the side of the Petitioner Union, it is argued that since 2003 the Petitioner had been working in the Maintenance Department of the Respondent Society. Instead of giving opportunity to the working employees who are qualified, the Respondent Society had approached the Employment Exchange, Labour Department, Puducherry, to fill the four posts of Technical Superintendent. The act of the Respondent Society trying to give appointment to the outsiders is against the Principles of equity, practice and service conditions of the Respondent Society. It is also submitted that the Petitioner possessed the required qualification and also eligible as per the service conditions such as pass in Degree, possessing Certificate of Diploma in Mechanical Engineering, P.G. Diploma in Dairy Technology and also possessed Certificate issued from National Apprenticeship in the Trade of Boiler Attendant and ITI Fitter Trade. He has 16 years experience in the field of Maintenance Department under the Respondent Management and therefore, he is eligible for consideration to be appointed as Technical Superintendent in one of the resultant vacancies of the said post. He further added

that he had made several representations on 18-06-2015, 07-07-2015, 04-03-2016 and 25-08-2016 to the Respondent Management to consider his case by giving preference than choosing outsiders for offering appointment to the post of Technical Superintendent in the Respondent Society but, the Respondent failed to act so far without any justification.

16. Heard both on this point at great length. Promotion refers to upward movement in present job leading to greater responsibilities, higher status and better salary. In *State of Mysore vs. Narasingh Rao-AIR 1968 SC 349* and *Markandeya vs. State of Andhra Pradesh-AIR 1989 SC 1308*, held that Educational Qualifications can be made the basic for classification of employees in the matter of Pay Scales, Promotions, *etc.*, Higher Pay Scale can be prescribed for employees possessing higher qualification. Similarly, in the matter of employee promotion, classification on the basis of educational qualification, so as to deny eligibility to a higher post to an employer possessing lesser qualification is valid.

17. In *State of Jammu and Kashmir vs. Trilok Natha Khosa-AIR 1974 SC 1* and in *Roop Chand Adalakh vs. Delhi Development Authority-AIR 1989 SC 301*, the Hon'ble Supreme Court of India, has upheld that Educational Qualification can Justifiably be made as the basis for qualification for the purpose of promotion to the higher post.

18. The learned Counsel appearing for Respondent Society argued that the Hon'ble High Court of Madras in its Order, dated 22-11-2017 in W.P. No. 24492/2010 observed and directed that "in Pondicherry, large number of irregular or illegal appointments are made by the Authorities. It is the duty of the Government to provide equal opportunity in public employments under the Constitutional Principles to the Citizen by undertaking the process of appointment in accordance with the rules in force. When the Authorities are indulging in such illegal practice of appointing persons in violation of the regular Recruitment Rules against a sanctioned or permanent post, when it is the duty of the Government to identify all such illegal appointments and initiate appropriate actions, including disciplinary action, against such officials, who committed the act of appointing employees illegally". In view of the above Judgment of Hon'ble High Court of Madras, an ID Note, dated 23-02-2018 issued by the Department of Personnel and Administrative Reforms, Government of Pondicherry that all the Administrative Departments, Public Sector Undertakings, Autonomous Bodies, *etc.*, shall ensure that no illegal/irregular appointments in violation of Recruitment Rules are made under any

circumstances. Further, in the said ID Note, it has also mentioned that the Development Commissioner/Commissioners-*cum*-Secretaries/Secretaries/Special Secretary to Government/Head of Departments/Heads of Offices, Heads of Public Sector Undertakings and Autonomous Bodies of Government of Puducherry shall be accountable for strict compliance of the aforesaid orders of Hon'ble High Court of Judicature at Madras in respect of Departments/Public Sector Undertakings/Autonomous Bodies/Corporations/Societies/Boards/Authorities under their Control". The said ID Note, dated 23-02-2018 was produced on the side of Respondent Management during arguments.

19. For which, the learned Counsel appearing for the Petitioner submitted that this ID Note applicable only to the Government Departments, Corporations run directly by Government of Puducherry. Hence, he concluded that this ID Note referred on the side of the Respondent Management is not for the Respondent Society and thus, the Respondent Society is making wantonly unnecessary defence. He prayed to reject the same.

20. On close and careful perusal of the case records before me, I could able to see that even in the Conciliation Proceedings before the Labour Officer (Conciliation), Puducherry, as well as in the counter filed by the Management Society in the Industrial Dispute, the same plea has been specifically made about the said W.P Order of the Hon'ble High Court of Madras and consequent ID Note of the Government of Puducherry that shall be accountable for strict compliance of the aforesaid orders of Hon'ble High Court of Judicature at Madras in respect of Departments/Public Sector Undertakings/Autonomous Bodies/Corporations/Societies/Boards/Authorities under their Control. Further, it is seen that the Management Society even in the Conciliation proceedings before the Labour Officer (Conciliation), Government of Puducherry has submitted the same ID Note as one of the reasons for not accepting the claim made by the Petitioner. This could be seen from Ex.P4-the Failure Report, dated 11-01-2019 of the Labour Officer (Conciliation), Government of Puducherry to the Secretary to the Government (Labour), Puducherry. It is mentioned by the Labour Officer (Conciliation), Government of Puducherry in his Failure Report Ex.P4 at para 5 and also the relevant extract of the order, dated 22-11-2017 in W.P. No. 24492/2010 of the Hon'ble High Court of Madras has also been reproduced thereunder. Further in the same Ex.P4 at para 7 it has been elaborately discussed about the said ID Note, dated 23-03-2018. Therefore, the stand of the Respondent Society from the beginning is that there was an ID Note

issued by the Government of Puducherry, which is equally applicable for Ponlait Establishment and the strict compliance of the Order is mandatory. It is further stated by the Respondent Society that adoption of Recruitment Rules against a sanctioned post is necessary for an appointment. Hence, the administration of the Ponlait submitted a Draft Recruitment Rules and cadre strength to the competent authority seeking necessary approval to regularize the services of the Casual employees and also to accord promotion to the employees.

21. The argument put forth by the Petitioner counsel that ID Note is only applicable for Government Departments, Corporations run directly by the Government of Puducherry, not to the Societies like Respondent Society not accepted for the reason that in the ID Note of Government of Puducherry, dated 23-02-2018, it is clearly mentioned that the ID Note applicable to Departments/Public Sector Undertakings/Autonomous Bodies/Corporations/Societies/Boards/Authorities under their control. So being a society the Respondent Management also bound to follow the said ID Note issued by the Government of Puducherry with regard to Appointments and Regularization. Thus, the above contention made by the learned counsel for the Petitioner Union is not sustainable and thus rejected.

22. Secondly, the serious contention made on the side of the Respondent Management is that the Petitioner has approached two different forums one for Re-designating him with a high pay scale before the Registrar, Co-operative Societies under section 84 of Pondicherry Co-operative Societies Act, 1972 and another for promotion before this Industrial Tribunal as Industrial Dispute. Admittedly, his claim to re-designate his post and to revise his Pay Scale band was declined in the Proceedings under section 84 before the Registrar, Co-operative Societies and on which an appeal before the Appellate Authority is still pending for consideration. That being the case, now again the claim for the Promotion for a new Post cannot be entertained. To substantiate the above Ex.R1 the photocopy of the Appeal filed by the Petitioner Mr. R. Magesh before the Co-operative Tribunal (PDJ), Pondicherry in Co-operative Appeal in 02/2018 marked on the side of the Respondent Management.

23. From Ex.R1, I could able to find that the Petitioner Mr. R. Magesh seeking for the relief to re-designate his post from Operator Grade-I (Boiler), Dairy Plant Maintenance to Boiler Attendant Grade-I and to fix his Pay Scale ₹ 5,200-20,200 + Grade Pay of ₹ 2,400 with effect from 01-07-2007. Further, the Petitioner Mr. R. Magesh in his Appeal application Ex.R1 at para 9 mentioned that the Respondent Management service

regulation for the employees mentioned only the list of post and the pay scale attached to the said post was not mentioned in the Service Recruitment Rules and therefore the appellant Mr. R. Magesh collected information from other institutions regarding the similar post available in the said institutions and the Pay Scale offered to the said post was collected and given to the Respondent Management for implementation. From all the above, it is understood that already a dispute between the Petitioner Mr. R. Magesh and the Respondent Society is still pending under the Pondicherry Co-operative Societies Act, 1972 regarding the relief of re-designation and to fix him in a high Pay Scale band and now the present Industrial Dispute with a prayer to consider him for promotion before this Tribunal, seems to be similar reliefs claiming to fix in a post with high pay scale band. That being the case, in such a situation, when his appeal for redesignation and fixation of high Pay Scale are still pending for disposal, I do not find any substantial and Justifiable reasons shown by the Petitioner Union for the claim to consider him for the Promotion for a new Superior Post and on this count itself the present claim cannot be entertained.

24. Further, the another point of defence placed by the Respondent Society is that services of the Petitioner Mr. R. Magesh is purely temporary and has not been regularized. He was engaged as Casual worker in 2005 with a qualification of S.S.L.C and I.T.I (Fitter) and thereafter, placed in the V Pay time scale from 01-07-2007 to 30-06-2008 and VI Pay time scale from 01-07-2008 to 30-10-2011. Subsequently he was appointed as Operator (Boiler) purely on temporary basis with effect from 01-01-2011 and thereafter he was promoted as Operator Grade-I (Boiler) purely on *ad hoc* and temporary basis from 01-03-2016 and therefore the services of Mr. R. Magesh is purely temporary and has not been regularized. Thus, the Respondent Society states that Petitioner Union's claim to consider him for Promotion cannot be entertained and liable to be rejected.

25. Whereas, it is contended by the learned Counsel appearing for the Petitioner Union that Mr. R. Magesh is a regular permanent employee of the Respondent Society. When it is claimed that his employment is a regular and permanent service, not a temporary or *ad hoc* one, it is on the petitioner Union who affirms the fact has to prove the same before this Tribunal. PW1 Mr. Magesh during his cross-examination has deposed that "நான் 2003-ல் பணிக்கு சேர்ந்தேன் அதற்கான உத்தரவு நகலை தாக்கல் செய்துள்ளேன். இந்த வழக்கில் பாண்டலே தொழிலாளர்கள் Service Condition குறித்து ஆவணத்தை தாக்கால் செய்யவில்லை என்றால் சரிதான். Further, there is no piece of documentary evidence produced on the side of the Petitioner Union to substantiate the same.

26. Ex.P1 is the photocopy of the letter of the Pondicherry Co-operative Milk Producers' Union Limited addressed to the Employment Officer, Employment Exchange, Puducherry calling for the particulars of candidates enrolled with Degree in Dairy Technology annexed with the Form for Notification of Vacancies for the post Technical Superintendent (Dairy). In which the Education Qualification mentioned as should possess regular Degree in Dairy Technology with 3 years experience or regular Diploma in Dairy Technology with 5 years experience. The age for the post is mentioned as "below 30 years". During cross-examination, PW1 Petitioner Mr. R. Magesh has categorically admitted the above qualifications and age eligibility mentioned in EX.P1. With regard to qualification and eligibility, PW1 in his cross-examination deposed as follows:

நான் தாக்கல் செய்திருக்கும் மத.சா.6-ல் உள்ள Diploma in Mechanical Engineering என்ற படிப்பை Regular படிப்பில் முடித்துள்ளேனா என்றால் இல்லை. மாலை நேர கல்லூரியில் படித்தேன். அந்த படிப்பை, ஏப்ரல் 2014-ல் படித்து முடித்தேன். நான் B.Com. என்ற படிப்பை, தபால் வழியாக படித்து முடித்தேன். அதனை ஜூன் 2012-ல் படித்து முடித்தேன். நான் அண்ணாமலை பல்கலைக்கழகத்தில், தபால் வழியாக, PG Diploma in Dairy Technology என்ற படிப்பை, மே 2016-ல் படித்து முடித்தேன்.

27. Further, during his cross-examination on 21-10-2021, PW1 deposed as: "இந்த வழக்கு சம்பந்தமாக தொழிலாளர் அலுவலர் (சமரச அதிகாரி) அவர்களுக்கு எனது பெயரில் மனு கொடுத்தேன் என்றால் சரிதான். வேலைவாய்ப்பு அலுவலகம் மூலமாக தொழிலாளர் சேர்க்கைக்கு. எதிர்மனுதாரர் அறிவிப்பு கொடுத்திருந்த நிலையில் மேற்படி நிறுவனத்தில், தகுதியுடையவர்களுக்கு அந்த பணியினை வழங்க வேண்டும் என்று மனுவில் பரிசீலனை கோரியுள்ளேன். இந்த நீதிமன்றத்தில் அத்தகைய பரிசீலனை கோர இயலாது என்று சொன்னால் சரியல்ல. புதுச்சேரி முதன்மை மாவட்ட நீதிமன்றத்தில் என்னால் தொடரப்பட்ட Co-operative Appeal No.02/2018 என்ற வழக்கு, இன்றைய தேதியிலும் நிலுவையில் உள்ளது என்றால் சரிதான். அந்த வழக்கில் என்னால் தாக்கல் செய்யப்பட்ட மேல்முறையீடு மனு Ex.R1 ஆகும். மேற்படி, மேல்முறையீடு மனுவிற்கும், இவ்வழக்கிற்கும் யாதொரு சம்பந்தமும் இல்லை. மேற்படி Co-operative Appeal-வில் தற்போது எனக்கு வழங்கப்பட்ட பதவி தவறாக வழங்கப்பட்டது என்றும் அதை மீண்டும் மாற்றி அமைக்க வேண்டும் என்றும் பரிசீலனை கோரியுள்ளேன். என்ன பதவி வழங்கப்பட வேண்டும் என்று நான் தாக்கல் செய்துள்ள மேல்முறையீட்டில் சொல்லியுள்ளேன். என்னை பதவி மாற்றம் செய்து Boiler Attendant-ராக நியமிக்கும்படியும், அதற்கான சம்பளம் விகிதத்தை கொடுக்க வேண்டும் என்றும் கோரியுள்ளேன். இவ்வழக்கில், எனக்கு பதவி உயர்வு வழங்க வேண்டும்.

28. Every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity means the right to be "considered" for promotion. It was held by Honble Apex Court on various occasions that if, a person satisfies the eligibility and zone *criteria*, but, is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefore. However, though a right to be considered for promotion is a condition of service, mere chance of promotion is not.

29. Whereas, in the instant case, it is admitted by the petitioner Mr. R. Magesh has completed his Diploma in Mechanical Engineering in the Evening College during April 2014. He also did his B.Com. through correspondence in June 2012. Further he completed his P.G. Diploma in Dairy Technology through Distance Education in Annamalai University in May 2016.

30. The Hon'ble High Court of Madras in *B. Muthuramalingam Vs. Government of India (2022 SCC online Mad 1306)* held that Promotion *per se* cannot be claimed as a matter of right by the employees. No doubt, consideration for Promotion is a Fundamental Right of the employee. Further the Hon'ble Court added that administrative prerogative cannot be insisted upon by the employees though they are eligible for Promotion/Appointments as the case may be. Further the Hon'ble High Court of Madras observed that mere preparation of panel by the Authority Competent would not be a ground to confer a right on the Petitioner to seek a direction against the Government of India to convene a Review Committee meeting and to prepare a Panel.

31. Further, during cross-examination, the claim Petitioner Mr. R. Magesh as PW1 also admitted that as per Ex.P1 - (Form for notification of Vacancies sent by the Managing Director, Respondent Society to the Employment Officer, Employment Exchange, Labour Department, Puducherry), Age eligibility has been mentioned as below 30 years and qualification should possess regular degree in Dairy Technology with 3 years experience or regular Diploma in Dairy Technology with 5 years experience. Further, more the admitted position is that already a dispute for consideration regarding this

prayer for re-designation and for fixing new Pay Scale Band is declined by the Registrar of Co-operative Societies, Puducherry under section 84 of Puducherry Co-operative Societies Act, 1972 and against the said order an Appeal is pending before the Appellate Authority (PDJ, Puducherry). As already discussed above, the claim Petitioner has failed to demonstrate before this Tribunal that he is in the row of seniority and qualified for the said post satisfying the eligibility *criteria* with regard to age as well as qualification. When it is disputed by the Respondent Management Society that he is only a temporary employee, no documentary evidences placed by the claim Petitioner Union to show that he is only a regular employee under the Respondent Management. No appointment order filed by the Petitioner and same admitted by the PW1/ R. Magesh in his cross-examination.

32. From the above discussions and findings, I hold that the Petitioner has not established even a semblance of legal right to direct the Respondent Management to consider his representation and mere direction to consider the representation would do no service to the cause of justice in the absence of establishing any legal right. On the whole, I could not find any valid reason to allow this prayer as claimed. Thus, the point for determination is decided accordingly as against the Petitioner to the effect that the Petitioner Union is not entitled for any relief from this Tribunal.

33. In the result, Reference is unjustified and the Industrial Dispute is dismissed. No costs.

Dictated to the Stenographer, directly typed by him, corrected and pronounced by me in open Court, on this 10th day of November 2022.

V. SOFANA DEVI,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 24-02-2022 Mr. R. Magesh

List of petitioner's exhibits:

Ex.P1 — 29-06-2015 Photocopy of the letter addressed to the Employment Officer by the Respondent.

Ex.P2 — — Photocopy of the list of Technical Superintendent as on 31-12-2015.

Ex.P3 Series	—	—	Photocopy of the letter by R. Magesh (Operator Boiler) to the Administrator/Managing Director of the Respondent, dated 18-06-2015. (ii) Photocopy of the letter of the Union, dated 07-07-2015 to the Chief Minister, Puducherry. (iii) Photocopy of the letter, dated 04-03-2016 by R. Magesh to the Administrator/Managing Director of the Respondent. (iv) Photocopy of the letter, dated 25-08-2016 by R. Magesh to the Administrator/Managing Director of the Respondent.	Photocopy of the Consolidated Mark Sheets in Mechanical Engineering of R. Magesh. Photocopy of the Provisional Certificate of B.Com., of R. Magesh. Photocopy of the Programme Completion Certificate in B.Com., of R. Magesh. Photocopy of the Provisional Certificate in P.G. Diploma in Dairy Technology of R. Magesh. Photocopy of the Grade Certificate in P.G. Diploma in Second Class of R. Magesh.
Ex.P4	—	11-01-2019	Photocopy of the Failure Report by the Labour Officer (Conciliation), Puducherry.	<i>List of respondent's witnesses:</i> Nil <i>List of respondent's exhibits:</i>
Ex.P5	—	11-07-2019	Photocopy of the Notification issued by the Puducherry Government.	Ex.R1 — — Photocopy of the Petition in Co-operative Appeal No. 02/2018 before the Principal Sessions and District Court, Puducherry.
Ex.P6 Series	—	—	Photocopy of the Diploma Certificate in Mechanical Engineering of R. Magesh.	V. SOFANA DEVI, Presiding Officer, Industrial Tribunal-cum-Labour Court, Puducherry.

புதுச்சேரி அரசு

துணை மாவட்ட ஆட்சியர் (வருவாய்) அலுவலகம், காரைக்கால்

எண் 1988/DCR/KKL/LGR/MVP/C3/2022-23.

அறிவிக்கை

[புதுச்சேரி நில மானிய விதி 1975, விதி 60(iii)-ன் கீழ்]

புதுச்சேரி அரசால் தங்களுக்கு ஒப்படை செய்யப்பட்ட கீழ்க்காணும் நிலவிவரங்களுடைய இடத்தில் தாங்கள் வீடு கட்டாமலோ அல்லது குடியிருக்காமலோ இருப்பதன் மூலம் தங்களுக்கு வழங்கப்பட்ட நில ஒப்படை ஆணையில் காணப்படும் நிபந்தனை (2)-ஐ தாங்கள் கடைபிடிக்காததை அறியவும்.

வரிசை எண்	ஒப்படை பெற்றவரின் பெயர் மற்றும் முகவரி	மறு/நகர அளவை எண்	நிலத்தின் பரப்பளவு	நில ஒப்படை ஆணை எண்
(1)	(2)	(3)	(4)	(5)
			ஹெ. ஆ. சா.	
24. கீழ்வெளி வருவாய் கிராமம்				
1	திருமதி சகாயமேரி, க/பெ. சந்தனசாமி.	G/4/3	0 00 46	128/07-08